

ORIGINAL

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ARIZONA CORPORATION COMMISSION  
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Attorneys for Western Resource Advocates

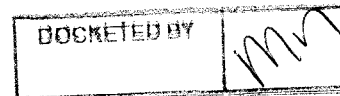
**BEFORE THE ARIZONA CORPORATION COMMISSION**

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

Arizona Corporation Commission

**DOCKETED**

JUN 28 2010



IN THE MATTER OF THE APPLICATION  
OF SOLARCITY FOR A DETERMINATION  
THAT WHEN IT PROVIDES SOLAR  
SERVICE TO ARIZONA SCHOOLS,  
GOVERNMENTS, AND NON-PROFIT  
ENTITIES IT IS NOT ACTING AS A  
PUBLIC SERVICE CORPORATION  
PURSUANT TO ART. 15, SECTION 2 OF  
THE ARIZONA CONSTITUTION.

Docket No. E-20690A-09-0346

**WESTERN RESOURCE  
ADVOCATES' COMMENTS  
REGARDING PROPOSED  
AMENDMENTS**

Western Resource Advocates ("WRA") submits the following comments  
regarding the amendments proposed by Chairman Mayes and Commissioner Pierce in  
connection with the above-captioned matter.

WRA generally supports the amendments proposed by both Chairman Mayes and  
Commissioner Pierce. Both focus on the public interest dimension associated with the  
determination of whether SolarCity is a public service corporation when executing solar  
services agreements with schools, government and other nonprofit organizations. Based

1 on the record in this case, it is clear that the public interest does not require government  
2 intervention in the form of price regulation and that a contrary determination would be  
3 inconsistent with the Commission's established renewable energy objectives.

4 Having said that, WRA believes that both of the proposed amendments could  
5 benefit from the inclusion of specific findings of fact relating to the *Serv-Yu* Factors. In  
6 particular, there should be specific findings to the effect that there is no dedication of  
7 private property to public use in this case, no public interest in customer-sited distributed  
8 energy projects, no monopoly or intention to monopolize on the part of SolarCity, and no  
9 obligation to serve all potential customers. In addition, the findings of fact should  
10 reiterate that solar service agreements do not provide essential services and that  
11 customers are well informed about the agreements they have signed with SolarCity.  
12 WRA believes that specific findings on these issues improve the legal sufficiency of each  
13 of the proposed amendments.

14 WRA also believes that each of the proposed amendments could benefit from the  
15 removal of provisions dealing with matters that do not need to be addressed or decided in  
16 this case. In Chairman Mayes' amendment, a statement on page 2 indicates that  
17 extending the use of SSAs to customers other than schools, government or other  
18 nonprofit entities would weigh in favor of regulation. However, this is an issue that was  
19 not addressed in this case. As a result, there is no factual record upon which the  
20 Commission can draw to support the inclusion of such a statement in the Commission's  
21 decision and the statement should be deleted from any amendments adopted by the  
22 Commission.

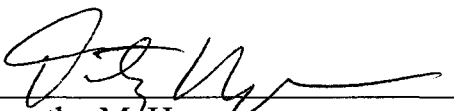
23 Likewise, with respect to Commissioner Pierce's amendment, the statements on  
24 pages 1 and 2 of the amendment regarding the similarity between SSAs and PPAs are  
25 unnecessary for the Commission's decision and should be deleted from any amendments

1 adopted by the Commission. Additionally, the statement on page 2 that "The parties  
2 generally agree that SolarCity...would be acting as a public service corporation if it used  
3 a PPA to accomplish the same thing" does not reflect the position of at least some of the  
4 parties and it should be deleted from any amendment adopted by the Commission.

5 In conclusion, WRA supports both amendments consistent with the suggested  
6 revisions.

7 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of June, 2010.

8 ARIZONA CENTER FOR LAW IN  
9 THE PUBLIC INTEREST

10 By   
11 Timothy M. Hogan  
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14 Attorneys for Western Resource  
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16 ORIGINAL and 13 COPIES of  
17 the foregoing filed this 28<sup>th</sup> day  
18 of June, 2010, with:

19 Docketing Supervisor  
20 Docket Control  
21 Arizona Corporation Commission  
22 1200 W. Washington  
23 Phoenix, AZ 85007

24 COPIES of the foregoing  
25 electronically served this  
28<sup>th</sup> day of June, 2010 to:

All Parties of Record